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**From:** Kupchan, Simma [Kupchan.Simma@epa.gov]  
**Sent:** 4/23/2018 5:05:14 PM  
**To:** Wade, Alexis [Wade.Alexis@epa.gov]  
**Subject:** FW: FL ESA Materials

Want to chat? Let me know when you have a few minutes.

Simma Kupchan  
EPA Office of General Counsel  
Water Law Office  
202-564-3105  
WJC North #7426Q

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**From:** Neugeboren, Steven  
**Sent:** Monday, April 23, 2018 1:04 PM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Subject:** RE: FL ESA Materials

I was offering a mtg if you wanted to, so up to you all.

Steve Neugeboren  
Associate General Counsel for Water  
U.S. EPA  
1200 Pennsylvania Ave., NW  
Washington, DC 20460  
202 (564-5488)

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**From:** Kupchan, Simma  
**Sent:** Monday, April 23, 2018 12:29 PM  
**To:** Neugeboren, Steven <Neugeboren.Steven@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Subject:** RE: FL ESA Materials

Thanks for your review, Steve. I will coordinate with Alexis on these edits. It looks as if you are suggesting a meeting to go through them; is that right? Or do you want Alexis and me to try to address them first?

Thanks,

Simma Kupchan  
EPA Office of General Counsel  
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202-564-3105  
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**From:** Neugeboren, Steven  
**Sent:** Monday, April 23, 2018 11:40 AM  
**To:** Kupchan, Simma <Kupchan.Simma@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>  
**Cc:** Wehling, Carrie <Wehling.Carrie@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>  
**Subject:** RE: FL ESA Materials

I have reviewed the document that have some comments. (David – in order to help move this process forward efficiently, please let us know if you have any reactions for, against, or in addition to my comments so the next draft can reflect them.)

Regarding process, I believe Matt wanted to be the principle in moving this through the system, so I think the next step would be to send this to Matt, and he can respond to it and choose to share it with Dave Ross and, if he is ready, the RA.

## Ex. 5 AC/DP

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So I have provided comments on both documents. My comments are overlapping but I think consistent and taken together can hopefully guide the next draft. there's a fair number of suggestions so if it would be efficient/helpful we can walk through them together.

## Ex. 5 AC/DP

Finally, please look at Dave's email from 3/25, particularly where he talked about a joint federal-state permitting process, and based on that I think we need to take a stab at drafting language for the MOA about that. Also he discusses a corps guidance I'm not familiar with so would like to know what that says and how that relates to the MOA and how we would otherwise address that with Dave.

And then given his interest in the corps designating the state a non-federal rep in section 7 constulation

Ex. 5 Deliberative Process (DP)

## Ex. 5 Deliberative Process (DP)

Steve Neugeboren  
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202 (564-5488)

From: Kupchan, Simma

Sent: Friday, April 20, 2018 3:23 PM

To: Fotouhi, David <Fotouhi.David@epa.gov>

Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Wade, Alexis

<Wade.Alexis@epa.gov>

**Subject:** FL ESA Materials

David,

Attached please find a paper outlining a potential path forward to address FL's concerns about ESA liability following assumption of the CWA 404 program, along with draft MOA language that could potentially lay out this process.

WLO drafted this paper jointly with R4. It has been reviewed in OW through John Goodin's level. Steve is still reviewing, but we wanted to send to you now to keep things moving. Please let us know if you have questions or edits, or if you would like to send directly to Matt for transmission to Dave Ross.

R4 is very eager to follow up with Florida. Once you review these documents and are comfortable with them, we will let Mary Walker in the Region know; she would like to transmit these documents to the R4 RA as soon as our Front Office is ready to send them to Dave.

# Ex. 5 AC/DP

I am also attaching the current draft of the FL-EPA MOA, so that you can see where the proposed language might fit. The current draft is still rough, though, and undergoing negotiation and review.

Thanks for your attention, and, again, I'm more than happy to answer any questions. Thanks to Alexis for her help with this!

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